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5 Attorneys for Plaintiffs
ELKHORN BAPTIST CHURCH et al.

7 IN THE CIRCUIT COURT OF THE STATE OF OREGON
8 IN AND FOR THE COUNTY OF BAKER

9 ELKHORN BAPTIST CHURCH, An
Oregon Non-Profit Corporation;
10 CALVARY CHAPEL NEWBERG, An
Oregon Non-Profit Corporation;
11 CALVARY CHAPEL LINCOLN
CITY, An Oregon Non-Profit
12 Corporation; CALVARY CHAPEL
SOUTHEAST PORTLAND, An
13 Oregon Non-Profit Corporation; NEW
HORIZON CHRISTIAN
14 FELLOWSHIP, An Oregon Non-Profit
Corporation; CAMAS VALLEY
15 CHRISTIAN FELLOWSHIP, An
Oregon Non-Profit Corporation;
16 PEOPLES CHURCH, An Oregon Non-
Profit Corporation; PREPARE THE
17 WAY, An Oregon Non-Profit
Corporation; BEND COMMUNITY
18 CHURCH, An Oregon Non-Profit
Corporation; COVENANT GRACE
19 CHURCH, An Oregon Non-Profit
Corporation; RED ROCK COWBOY
20 CHURCH, An Oregon Non-Profit
Corporation; EAGLE VALLEY
21 COWBOY CHURCH, An Oregon Non-
Profit Corporation; CALVARY
22 CHAPEL LEBANON, An Oregon Non-
Profit Corporation; RIVERVIEW
23 CHRISTIAN FELLOWSHIP, An
Oregon Non-Profit Corporation;
24 SALEM EVANGELICAL CHURCH,
An Oregon Non-Profit Corporation;
25 GENEVA ACADEMY, An Oregon
Non-Profit Corporation; JEDIDIAH
26 McCAMPBELL, An Individual;
RONALD OCHS, An Individual;

Case No.: 20-CV-17482

**SECOND AMENDED VERIFIED
COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF BASED ON
VIOLATION OF CIVIL RIGHTS
[Or. R. Civ. P. 79(1)(B); ORS 28.010,
28.020, and 28.080]**

1 BRIAN NICHOLSON, An Individual;
2 JAMES B. THWING, An Individual;
3 MARK RUSSELL, An Individual;
4 PHILIP MAGNAN, An Individual;
5 RONALD W. RUST, An Individual;
6 TRAVIS HUNT, An Individual;
7 MASON GOODKNIGHT, An
8 Individual; MARK MAYBERRY, An
9 Individual; LORI MAYBERRY, An
10 Individual; BENJAMIN STEERS, An
11 Individual; MICHAEL CARROLL, An
12 Individual; KEVIN J. SMITH, An
13 Individual; POLLY JOHNSON, An
14 Individual; BENJAMIN BOYD, An
15 Individual; ANNETTE LATHROP, An
16 Individual; ANDREW S.
17 ATANASOFF, An Individual;
18 SHERRY L. ATANASOFF, An
19 Individual; MICAH AGNEW, An
20 Individual; ANGELA ECKHARDT, An
21 Individual; THOMAS CRISWELL, An
22 Individual; JAMES BRUMBACH, An
23 Individual; JERRY LENHARD, An
24 Individual; MARK HANKE, AN
25 Individual; JOHN VOLLE, An
26 Individual; ARDEN SLEADD, An
27 Individual; ANTHONY NUNES, An
28 Individual; RICHARD CHESHER, An
Individual; SHARON CHESHER, An
Individual; KIM MOSBY, An
Individual; GREGORY ADAMS, An
Individual; DENNIS LINTHICUM, An
Individual; WILLIAM POST, An
Individual; and MICHAEL
NEARMAN, An Individual,

Plaintiffs,

v.

KATHERINE BROWN, Governor of
the State of Oregon; and DOES 1
THROUGH 50, Inclusive,

Defendants.

1 **INTRODUCTION**

2 In responding to the currently ongoing worldwide coronavirus pandemic,
3 KATHERINE “KATE” BROWN (“GOVERNOR”), Oregon’s presiding Governor and
4 the Defendant in this proceeding, has exceeded her constitutional authority: Pursuant to
5 Article X-A, § 6 of the Oregon Constitution, after GOVERNOR declares a public
6 health emergency, GOVERNOR may only exercise her emergency powers for 30 days.
7 If, in the judgment of GOVERNOR, conditions necessitate an extension of time to
8 exercise her emergency powers to effectively respond to a public health emergency, she
9 has lawful recourse by obtaining approval from three-fifths of each house of the
10 Legislature before the prescribed 30-day period expires. Because GOVERNOR failed
11 to avail herself of the constitutionally prescribed procedure, her initial executive order
12 declaring the public health emergency, issued on March 8, 2020, terminated by
13 operation of law on April 7, 2020, and all subsequent executive orders implementing or
14 extending the original order are legally null and void.

15 That notwithstanding, GOVERNOR is using the threat of criminal sanctions
16 against Oregonians – including Plaintiffs – who do not comply with her expired orders.
17 Accordingly, the Plaintiffs named below seek (1) a judicial declaration that Executive
18 Orders 20-03, 20-05 through 20-20, 20-22, and 20-24 have expired via operation of
19 law, and (2) a court order enjoining enforcement of the executive orders.

20 Based on the foregoing, the Plaintiffs in the herein proceeding, who are named
21 below, hereby allege as follows:

22 **PARTIES**

23 1. Plaintiffs are, and at all times herein were, U.S. citizens and residents of
24 Oregon.

1 2. Plaintiff ELKHORN BAPTIST CHURCH (“EBC”) is, and at all times
2 herein was, a religious non-profit corporation that operates a church in, and serves the
3 people of, the City of Baker City, in the County of Baker.

4 3. Plaintiff CALVARY CHAPEL NEWBERG (“CC-NEWBERG”) is, and at
5 all times herein was, a religious non-profit corporation that operates a church in, and
6 serves the people of, the City of Newberg, in the County of Yamhill.

7 4. Plaintiff CALVARY CHAPEL LINCOLN CITY (“CC-LINCOLN CITY”)
8 is, and at all times herein was, a religious non-profit corporation that operates a church
9 in, and serves the people of, the City of Lincoln City, in the County of Lincoln.

10 5. Plaintiff CALVARY CHAPEL SOUTHEAST PORTLAND (“CC-
11 SOUTHEAST PORTLAND”) is, and at all times herein was, a religious non-profit
12 corporation that operates a church in, and serves the people of, the City of Portland, in
13 the County of Multnomah.

14 6. Plaintiff NEW HORIZON CHRISTIAN FELLOWSHIP (“NEW
15 HORIZON”) is, and at all times herein was, a religious non-profit corporation that
16 operates a church in, and serves the people of, the City of Klamath Falls, in the County
17 of Klamath.

18 7. Plaintiff CAMAS VALLEY CHRISTIAN FELLOWSHIP (“CAMAS
19 VALLEY”) is, and at all times herein was, a religious non-profit corporation that
20 operates a church in, and serves the people of, the town of Camas Valley, in the County
21 of Douglas.

22 8. Plaintiff PEOPLES CHURCH (“PEOPLES”) is, and at all times herein
23 was, a religious non-profit corporation that operates a church in, and serves the people
24 of, the City of Salem, in the County of Marion.

1 9. Plaintiff PREPARE THE WAY (“PTW”) is, and at all times herein was, a
2 religious non-profit corporation that operates a ministry in, and serves the people of, the
3 City of Bend, in the County of Deschutes.

4 10. Plaintiff BEND COMMUNITY CHURCH (“BCC”) is, and at all times
5 herein was, a religious non-profit corporation that operates a ministry in, and serves the
6 people of, the City of Bend, in the County of Deschutes.

7 11. Plaintiff COVENANT GRACE CHURCH (“CGC”) is, and at all times
8 herein was, a religious non-profit corporation that operates a ministry in, and serves the
9 people of, the City of Roseburg, in the County of Douglas.

10 12. Plaintiff RED ROCK COWBOY CHURCH (“RED ROCK”) is, and at all
11 times herein was, a religious non-profit corporation that operates a ministry in, and
12 serves the people of, the City of White City, in the County of Jackson.

13 13. Plaintiff EAGLE VALLEY COWBOY CHURCH (“EAGLE VALLEY”)
14 is, and at all times herein was, a religious non-profit corporation that operates a ministry
15 in, and serves the people of, the City of Shady Cove, in the County of Jackson.

16 14. Plaintiff CALVARY CHAPEL LEBANON (“CC-LEBANON”) is, ant at
17 all times herein was, a religious non-profit corporation that operates a ministry in, and
18 serves the people of, the City of Lebanon, in the County of Linn.

19 15. Plaintiff RIVERVIEW CHRISTIAN FELLOWSHIP (“RCF”) is, and at all
20 times herein was, a religious non-profit corporation that operates a ministry in, and
21 serves the people of, the City of Coos Bay, in the County of Coos.

22 16. Plaintiff SALEM EVANGELICAL CHURCH (“SEC”) is, and at all times
23 herein was, a religious non-profit corporation that operates a ministry in, and serves the
24 people of, the City of Salem, in the County of Marion.

1 43. Plaintiff MARK HANKE (“HANKE”) is, and at all times herein was, a
2 resident of the City of Salem, in the County of Marion, and the pastor of a local church.

3 44. Plaintiff JOHN VOLLE (“VOLLE”) is, and at all times herein was, a
4 resident of the City of Summerville, in the County of Union, and the congregant of a
5 local church.

6 45. Plaintiff ARDEN SLEADD (“SLEADD”) is, and at all times herein was, a
7 resident of the City of Grants Pass, in the County of Josephine, and the congregant of a
8 local church.

9 46. Plaintiff ANTHONY NUNES (“NUNES”) is, and at all times herein was, a
10 resident of the City of Klamath Falls, in the County of Klamath, and the congregant of a
11 local church.

12 47. Plaintiff RICHARD CHESHER is, and at all times herein was, a resident
13 of the City of Keizer, in the County of Marion, and the pastor of Cornerstone Baptist
14 Church in Salem.

15 48. Plaintiff SHARON CHESHER is, and at all times herein was, a resident of
16 the City of Keizer, in the County of Marion, and a congregant of Cornerstone Baptist
17 Church in Salem.

18 49. Plaintiff GREGORY ADAMS (“ADAMS”) is, and at all times herein was,
19 a resident of the City of Fossil, in the County of Wheeler, and the pastor of the First
20 Baptist Church of Fossil.

21 50. Plaintiff KIM MOSBY (“MOSBY”) is, and at all times herein was, a
22 resident of the City of Tigard, in the County of Washington, and the congregant of a
23 local church.

24 51. Plaintiff DENNIS LINTHICUM (“LINTHICUM”) is, and at all times
25 herein was, a resident of the County of Klamath, the congregant of a local church, and a
26 legislator in the Oregon Senate.

1 52. Plaintiff WILLIAM POST (“POST”) is, and at all times herein was, a
2 resident of Keizer, in the County of Marion, a board member of a local church, and a
3 legislator in the Oregon House of Representatives.

4 53. Plaintiff MICHAEL NEARMAN (“NEARMAN,” and collectively with
5 McCAMPBELL, OCHS, NICHOLSON, THWING, RUSSELL, RUST, HUNT,
6 GOODKNIGHT, MARK MAYBERRY, LORI MAYBERRY, STEERS, CARROLL,
7 SMITH, JOHNSON, BOYD, LATHROP, SMITH, ANDREW ATANASOFF,
8 SHERRY ATANASOFF, AGNEW, ECKHARDT, CRISWELL, BRUMBACH,
9 LENHARD, HANKE, VOLLE, SLEDD, NUNES, RICHARD CHESHER, SHARON
10 CHESTER, LINTHICUM, and POST the “CHURCHGOERS”) is, and at all times
11 herein was, a resident of Independence, in the County of Polk, the congregant of a local
12 church, and a legislator in the Oregon House of Representatives.

13 54. Defendant KATHERINE “KATE” BROWN (“GOVERNOR”) is, and at
14 all times herein was, the governor of the State of Oregon.

15 55. The true names and capacities of Defendants DOES 1 THROUGH 50
16 (collectively the “DOES”), inclusive, are unknown to Plaintiffs, who thus sue said
17 Defendants under such fictitious names. Each of the Defendants designated herein as
18 one of the DOES is legally responsible for the events and happenings herein referred to
19 and proximately caused injuries to Plaintiffs thereby, as herein alleged. Plaintiffs will
20 seek leave of this Court to amend this Complaint to show the DOES’ names and
21 capacities once they have been ascertained.

JURISDICTION & VENUE

22
23 56. Plaintiffs refer to and hereby incorporate the allegations of Paragraphs 1
24 through 55 into this Paragraph as if fully set forth herein.

25 57. Pursuant to ORS 14.060, the Circuit Court In and For the County of Baker
26 (the “Court”) may exercise jurisdiction over any state official or officer, as such, or in

1 virtue of such status. Furthermore, ORS 14.060 allows plaintiffs to bring suit in the
2 county wherein the cause of suit, or some part thereof, arose. As illustrated below, this
3 case concerns Defendant GOVERNOR’s executive orders affecting the entire State of
4 Oregon, meaning all or part of Plaintiffs’ cause of action arose in every county in the
5 state, including Baker County.

6 GENERAL ALLEGATIONS

7 58. Plaintiffs refer to and hereby incorporates by reference the allegations set
8 forth in Paragraphs 1 through 57 into this Paragraph as if fully set forth herein.

9 59. Plaintiff EBC is a church that hosts two worship services – one at 11 a.m.,
10 one at 6 p.m. – every Sunday at 3520 Birch Street in Baker City. Approximately 25 to
11 40 people typically attend the first service; approximately 15 to 20 people typically
12 attend the second. EBC also hosts Sunday school at 10 a.m. every Sunday.

13 60. Plaintiff EBC hosts approximately 12 adults for Wednesday night Bible
14 study and prayer on Wednesday nights. EBC also hosts children in its Discovery Kids
15 program every Wednesday.

16 61. The coronavirus, aka COVID-19, is a novel infectious agent that may
17 cause respiratory disease leading to serious injury or death. Discovered in China in late
18 2019, the coronavirus caused a worldwide pandemic that made its way into the Pacific
19 Northwest as early as January 2020 and spread rapidly nationwide from there.

20 62. On March 8, 2020, in response to the imminent threat to public health and
21 safety presented by the coronavirus pandemic, Defendant GOVERNOR issued
22 Executive Order 20-03, which declared a statewide emergency in Oregon pursuant to
23 ORS 401.165 *et seq.* A copy of the order is attached hereto as **Exhibit “A.”**

24 63. In Executive Order 20-03, Defendant GOVERNOR declared that the state
25 of emergency brought on by the coronavirus pandemic would be in effect for 60 days.
26 *See* Ex. “A” [specifically, p. 3]. Executive Order 20-03 was thus set to expire pursuant

1 to its own terms on May 7, 2020. *See* Attached **Exhibit “B”** [a page from the website
2 TimeandDate.com showing the calculation of Executive Order 20-03’s stated expiration
3 date].

4 64. Soon after issuing Executive Order 20-03, Defendant GOVERNOR began
5 issuing a series of related executive orders aimed at preserving the public health and
6 safety. Chief among these orders, for purposes of this case, is Executive Order 20-12, a
7 copy of which is attached hereto as **Exhibit “C.”** Defendant GOVERNOR issued
8 Executive Order 20-12 on March 23, 2020. *Id.*

9 65. “To reduce the spread of COVID-19,” GOVERNOR declares in Executive
10 Order 20-12, “the United States Centers for Disease Control and Prevention (CDC) has
11 recommended community mitigation strategies to increase containment of the virus and
12 to slow transmission of the virus, including cancellation of gatherings of people and
13 social distancing in smaller gatherings.” Based on the CDC’s recommendations,
14 GOVERNOR declared in Executive Order 20-12 that “[i]t is essential to the health,
15 safety, and welfare of the State of Oregon that, to the maximum extent possible,
16 individuals stay at home or at their place of residence, consistent with the directives set
17 forth in my Executive Orders and guidance issued by the Oregon Health Authority.”

18 66. Executive Order 20-12 also prohibits what Defendant GOVERNOR deems
19 “non-essential social and recreational gatherings of individuals, outside of a home or
20 place of residence (e.g., parties, celebrations, or other similar gatherings and events) ...
21 regardless of size, if a distance of at least six feet between individuals cannot be
22 maintained.” *See* Ex. “C” [specifically, see p. 3, ¶ 1.a].

23 67. Although Executive Order 20-12 makes no specific reference to gatherings
24 of religious assemblies, neither does the order distinguish between gatherings that
25 Defendant GOVERNOR deemed essential and those she deemed non-essential. Still,
26 Executive Order 20-12 at least implicitly impinges on Plaintiffs’ free exercise of
27

1 religion, which is protected under both the Oregon and federal constitutions. Such
2 impingement especially exists because church worship services, wedding ceremonies,
3 and funerals can qualify as “celebrations.”

4 68. Plaintiff EBC and its congregants have complied with Executive Order 20-
5 12 even though EBC operates in one of four Oregon counties which, according to the
6 Oregon Health Authority (“OHA”), has had no confirmed coronavirus cases – let alone
7 deaths caused by or related to the disease – at any point since Defendant GOVERNOR
8 issued Executive Order 20-03. *See* Attached **Exhibit “D”** [a county-by-county
9 breakdown of coronavirus cases and deaths as of May 4, 2020, from OHA’s website].

10 69. Twenty-four of Oregon’s 38 counties have had no coronavirus-related
11 deaths and relatively few coronavirus cases. *See* Ex. “D.” These counties include
12 Lincoln, where Plaintiff CC-LINCOLN CITY is located; Klamath, where Plaintiff
13 NEW HORIZON is located; Jackson, where Plaintiff McCAMPBELL, OCHS, and
14 NICHOLSON live and attend church; Douglas, where Plaintiffs CAMAS VALLEY,
15 CGC, and GENEVA are located and where Plaintiffs RUST, HUNT, GOODKNIGHT,
16 and the MAYBERRYS live and attend church; Deschutes, where Plaintiffs PTW and
17 BCC operate ministries; Wallowa, where Plaintiff ECKHARDT lives and attends
18 church; and Wheeler, where Plaintiff ADAMS lives and pastors a church. *Id.*

19 70. The counties of Josephine, where Plaintiffs STEERS, CRISWELL, and
20 BRUMBACH live and attend church, and Umatilla, where Plaintiff JOHNSON lives
21 and attends church, have only had one coronavirus-related death apiece despite having a
22 combined 92 confirmed coronavirus cases. *See* Ex. “D.”

23 71. Only in the counties of Multnomah, Washington, and Marion, which boast
24 the three highest totals of confirmed coronavirus cases in the state, have the death tolls
25 climbed into double digits – and even then, the percentage of deaths relative to the total
26 number of cases in each county has not exceeded 6.1 percent. *See* Ex. “D.”

1 72. Although they strongly believe, not unreasonably, that Executive Order
2 20-12 impinges on their constitutionally protected religious rights to assemble and
3 worship corporately and do other acts that the Bible requires, the Plaintiff CHURCHES
4 – including and especially Baker County’s own EBC – have thus far complied with
5 Executive Order 20-12 for multiple reasons:

- 6 a. First, failure to comply with Executive Order 20-12 is punishable as a
7 Class C misdemeanor pursuant to ORS 401.990. *See* Ex. C [pp. 3-4, ¶
8 1.e]. CHURCHES do not want to expose themselves to criminal
9 liability, nor do they want their congregants, including the
10 CHURCHGOERS, to do so – especially since they would face a 30-day
11 jail sentence and/or a fine of up to \$1,250. *Id.*
- 12 b. Second, even if they wanted to host gatherings such as Sunday services,
13 Bible studies, and youth group meetings – not to mention special events
14 such as religious conferences, weddings, and funerals – CHURCHES
15 might not logistically be able to do so while observing the social
16 distancing requirements set forth in Executive Order 20-12. This is
17 especially true given that CHURCHES vary in the size of their
18 congregations, and their houses of worship vary in size and layout.
19 CHURCHES have already had to forego services on Easter Sunday,
20 arguably the most important holy day on the Christian calendar, and
21 Mother’s Day (Sunday, May 10, 2020), which is traditionally another
22 big day for church services.
- 23 c. Third, at the outset of the coronavirus pandemic, many, if not all,
24 CHURCHES shared Defendant GOVERNOR’s concerns about having
25 too many people too close together indoors, thereby increasing the risk
26 of spreading the coronavirus, especially to the persons most vulnerable

1 to it, such as the elderly. Many CHURCHES still do – and since they
2 may face civil liability for failing to follow CDC and OHA guidelines if
3 a member of their congregations becomes infected with the
4 coronavirus, the CHURCHES have every incentive to follow said
5 guidelines. However, given that in many parts of Oregon, including
6 and especially Baker County, there have been few, if any, coronavirus
7 cases – let alone deaths – CHURCHES believe the risk is minimal, or at
8 least has been reduced drastically enough for them to be able to re-open
9 their doors to regular congregants and newcomers alike. *See* Ex. “D.”
10 Accordingly, CHURCHES believe the breadth of Executive Order 20-
11 03 and the orders implementing it is no longer justified. Based on the
12 final line of Executive Order 20-12, however, [*see* ¶ 70, below],
13 CHURCHES have no idea how long it will be until GOVERNOR lets
14 them resume freely exercising their constitutionally protected religious
15 rights, and are at GOVERNOR’s mercy until she does.

16 d. Fourth, CHURCHES believed any restrictions Executive Order 20-12
17 placed on the free exercise of religion would be temporary.

18 73. The Plaintiff CHURCHGOERS likewise complied with Executive Order
19 20-12 for many of the same reasons as the Plaintiff CHURCHES.

20 74. Executive Order 20-12 concludes by stating that the order is to “remain[]
21 in effect until terminated by the Governor.” *See* Ex. “C” [p. 8]. As of this writing,
22 Defendant GOVERNOR has not declared Executive Order 20-12 terminated.

23 75. Furthermore, the closing statement of Executive Order 20-12 indicates the
24 order could last beyond the 60-day expiration date set forth in Executive Order 20-03 –
25 meaning that even if the current state of emergency terminated, Executive Order 20-12
26 would still be in effect until GOVERNOR decides otherwise.

1 76. Executive Order 20-12 is not the only executive order issued by Defendant
2 GOVERNOR that directly implicates religious liberty: Attached hereto as **Exhibit “I”**
3 is a copy of Executive Order 2020, which suspends in-person instructional activities at
4 schools, both public and private, statewide through June 30, 2020. Executive Order 20-
5 20 effectively inhibits GENEVA, a Christian school in Roseburg that meets the
6 definition of “private school” set forth in ¶ 1.c of that order, at best dictates the terms on
7 which GENEVA may carry out its religious mission, thereby infringing on GENEVA’s
8 freedom to determine how best to carry out its religious mission. At worst, Executive
9 Order 20-20 effectively inhibits GENEVA’s ability to carry out its religious mission.

10 77. On May 1, 2020, Defendant GOVERNOR issued Executive Order No. 20-
11 24, a copy of which is attached hereto as **Exhibit “E.”** Executive Order 20-24 extends
12 the current state of emergency until July 6, 2020.

13 **STATE LAW CAUSE OF ACTION: VIOLATION OF CIVIL RIGHTS**

14 78. Plaintiffs refer to and hereby incorporate by reference the allegations set
15 forth in Paragraphs 1 through 77 into this Paragraph as if fully set forth herein.

16 79. As indicated below, Plaintiffs bring the herein lawsuit for violation of their
17 civil rights under Oregon law, and not any provision of federal law.

18 **REQUEST FOR DECLARATORY RELIEF**

19 80. Plaintiffs refer to and hereby incorporate by reference the allegations set
20 forth in Paragraphs 1 through 79 into this Paragraph as if fully set forth herein.

21 81. ORS 28.010 declares that “[c]ourts within their respective jurisdictions
22 shall have the power to declare rights, status, and other legal relations, whether or not
23 further relief is or could be claimed.” ORS 28.020 permits persons “whose rights,
24 status, or other legal relations are affected by a constitution [or] statute ... [to] have
25 determined any question of construction or *validity* arising under any ... constitution
26

1 [or] statute ... and obtain a declaration of rights, status, or legal relations thereunder”
2 (emphasis added).

3 82. Article X-A, § 1(3) of the Oregon Constitution allows Defendant
4 GOVERNOR to declare catastrophic disasters within the state. Article X-A, § 1(1)
5 defines “catastrophic disaster” to mean “a natural or human-caused event that: (a)
6 Results in extraordinary levels of death, injury, property damage or disruption of daily
7 life in this state; and (b) Severely affects the population, infrastructure, environment,
8 economy or government function of the state.” Article X-A, § 1(2)(d) defines
9 “catastrophic disaster” to include a “public health emergency.”

10 83. Article X-A, § 1 provides no definition of what constitutes a “public health
11 emergency.” ORS 433.442(4), however, does – and the coronavirus pandemic meets
12 that definition (emphasis added):

13 “‘Public health emergency’ means an occurrence or *imminent threat* of an illness
14 or health condition that:

15 (a) Is believed to be caused by ... (B) The appearance of *a novel ... infectious*
16 *agent* ... [or] (C) An epidemic of communicable disease; ... and (b) Poses a high
17 probability of any of the following harms: (A) A large number of deaths in the
18 affected population; (B) A large number of serious or long-term disabilities in the
19 affected population; or (C) *Widespread exposure to an infectious or toxic agent*
20 *that poses a significant risk of substantial future harm to a large number of*
21 *affected persons in the affected population*” (emphasis added). The current
22 coronavirus pandemic thus meets the definition of “catastrophic disaster” set
23 forth in Article X-A, § 1(2)(d) of the Oregon Constitution.”

24 84. Section 6(1) of Article X-A declares that once Defendant GOVERNOR
25 has declared a public health emergency pursuant to § 1 – as she did on March 8, 2020
26 [see Ex. “A”] – the state of emergency is only in effect for 30 days. If GOVERNOR
27 wishes to extend the state of emergency, Article 6(2) outlines a procedure for doing so:
28 Before the expiration of the prescribed 30 days, GOVERNOR must obtain approval of
a three-fifths majority in each of the Legislature’s two houses.

1 85. The Court should note that the 30 days allotted to Defendant GOVERNOR
2 before she has to involve the Legislature under Article X-A, § 6 are more than the 14-
3 day window allotted to GOVERNOR under ORS 433.441(5), which states, “A
4 proclamation of a state of public health emergency expires when terminated by a
5 declaration of the Governor or no more than 14 days after the date the public health
6 emergency is proclaimed” (emphasis added). In other words, any public health
7 emergency GOVERNOR declares automatically expires after 14 days. *Id.* ORS
8 433.441(5) allows GOVERNOR to unilaterally extend the 14-day period before it
9 expires, but only for another 14 days. Since GOVERNOR needs to involve the
10 Legislature to extend the state of emergency beyond 30 days pursuant to Article X-A, §
11 6, this means GOVERNOR can only extend a public health emergency once. Any
12 additional extensions must be approved by the Legislature pursuant to Article X-A, § 6.

13 86. Furthermore, Article X-A, § 6(5) declares that Defendant GOVERNOR
14 “may not invoke the provisions of” § 1 “more than one time with respect to the same
15 catastrophic disaster.” In other words, if GOVERNOR fails to properly extend a state
16 of emergency as required under § 6(2), she cannot unilaterally extend the state of
17 emergency by declaring the emergency anew.

18 87. Subsections (2) and (5) of Article X-A, § 6, along with ORS 433.441(5),
19 exist to strike an appropriate balance between allowing Defendant GOVERNOR the
20 latitude to act unilaterally in the event of a crisis endangering public health and safety
21 and ensuring that any infringement on Oregonians’ constitutionally protected rights,
22 however necessary, is limited in duration. *See Attached Exhibit “F”* [relevant pages
23 from the voter pamphlet for Oregon’s 2012 general election – specifically, see p. 41,
24 which states that Article X-A “will maintain (Oregon’s) system of checks and balances,
25 allowing state government to effectively react to a critical and tragically challenging
26 event”]. It is thus imperative that GOVERNOR follow the procedure outlined in

1 Article X-A to ensure that she does not disregard the constitutionally protected rights of
2 Oregonians in perpetuity in the name of protecting public health and safety.

3 88. Defendant GOVERNOR neither convened the Legislature nor secured the
4 votes required to extend the state of emergency pursuant to Article X-A, § 6(2) of the
5 Oregon Constitution. *See Attached Exhibit “G”* [a copy of a news article from
6 OregonLive.com, The Oregonian newspaper’s website, dated March 31, 2020, in which
7 the president of the Oregon Senate declares that the Legislature would not convene to
8 address the coronavirus pandemic]. At least three legislators – LINTHICUM, POST,
9 and NEARMAN – can testify to this.

10 89. Because Defendant GOVERNOR neither convened the Legislature nor
11 secured the votes required to extend the state of emergency pursuant to Article X-A, §
12 6(2) of the Oregon Constitution, Executive Order 20-03, which GOVERNOR issued on
13 March 8, 2020 [*see Ex. “A”*], effectively terminated by operation of law on April 7,
14 2020 – the order’s stated expiration date of May 7, 2020 notwithstanding. *See Attached*
15 **Exhibit “H”** [a page from TimeandDate.com showing the calculation of Executive
16 Order 20-03’s actual expiration date].

17 90. When Defendant GOVERNOR declared a state of emergency in response
18 to the coronavirus pandemic, she declared that she did so pursuant to ORS 401.165 *et*
19 *seq.* and made no mention of Article X-A, § 1 of the Oregon Constitution. *See Ex. “A.”*
20 However, ORS 401.165 *et seq.* is not a means by which GOVERNOR may bypass the
21 strictures of the Oregon Constitution, which she swore to uphold and comply with when
22 she assumed the state’s highest office. *See Ex. “F”* [stating that Article X-A “assures
23 that the Governor and the Legislature will be able to work *as a team* to meet the urgent
24 needs of Oregonians who have been subjected to a catastrophic disaster” (emphasis
25 added)]. Though GOVERNOR used the words “state of emergency,” not “catastrophic
26 disaster,” the term “catastrophic disaster,” as defined in Article X-A, § 1(1) and 1(2)(d),

1 includes “public health emergencies” such as the current coronavirus pandemic.

2 GOVERNOR thus effectively declared a statewide catastrophic disaster on March 8,
3 2020, even though she did not use the term “catastrophic disaster.” *See* Ex. “A.”

4 91. Article X-A was added to the Oregon Constitution by Oregon voters in the
5 2012 general election. *See* Ex. “F.” By contrast, ORS 401.165 *et seq.* became law in
6 1949.¹ However broad the emergency powers granted to Defendant GOVERNOR may
7 have been in 1949, ORS 433.441 and Article X-A, § 6 have narrowed them
8 considerably, especially since the emergency powers granted to GOVERNOR cannot
9 exceed the bounds of the Oregon Constitution. *See* Ex. “F.”

10 92. The coronavirus pandemic does not even meet the definition of
11 “emergency” set forth in Chapter 401 of the Oregon Revised Statutes, the chapter
12 pursuant to which Defendant GOVERNOR declared a state of emergency in response
13 to the pandemic: ORS 401.025(1) defines “emergency” to mean “a human created or
14 natural event or causes or threatens to cause widespread loss of life, injury to person or
15 property, human suffering or financial loss, including but not limited to: (a) ... disease
16 ... ***and*** (b) A rapid influx of individuals from outside the state, a rapid migration of
17 individuals from one part of this state to another or a rapid displacement of individuals
18 if the influx, migration or displacement results from the type of event or circumstance
19 described in paragraph (a) of this subsection” (emphasis added). The key word in ORS
20 401.025(1) is “and”: Both the “event or circumstance” and “influx, migration or
21 displacement” elements must be present for the emergency to exist.

22 93. While the coronavirus pandemic falls within the “disease” provision of
23 subsection (a), Defendant GOVERNOR cannot prove that the pandemic has caused
24 persons from outside of Oregon to flee into Oregon to escape the pandemic.

25
26 ¹ *See* dilleradollar.wordpress.com/2020/04/24/governor-browns-emergency-orders-should-have-an-expiration-date/.

1 GOVERNOR can also prove no set of facts showing that the pandemic sent Oregonians
2 fleeing from one part of the state to another or displaced anyone. Accordingly, an
3 “emergency” does not exist for purposes of ORS 401.165 *et seq.*, meaning all orders
4 GOVERNOR has issued in response to the pandemic, from Executive Order 20-03
5 forward, are unlawful.

6 94. Furthermore, the emergency powers granted to Defendant GOVERNOR
7 under ORS 401.165 *et seq.* are not, in fact, very broad: ORS 401.032(2) states, “It is
8 declared to be the policy and intent of the Legislative Assembly that preparations for
9 emergencies and governmental responsibility for responding to emergencies ***be placed***
10 ***at the local level.*** The state shall prepare for emergencies, but shall not assume the
11 authority or responsibility for responding to an emergency ***unless the appropriate***
12 ***response is beyond the capability of the city and county in which the emergency***
13 ***occurs,*** the city or county fails to act, or the emergency involves two or more counties”
14 (emphasis added). In declaring a statewide public health emergency pursuant to
15 Executive Order 20-03 [*see* Ex. “A”] and effectively shutting down places of worship
16 under penalty of criminal sanctions pursuant to Executive Order 20-12 [*see* Ex. “C”],
17 GOVERNOR effectively took away the ability of each of Oregon’s 38 counties, and the
18 cities within those counties, to appropriately respond to the coronavirus pandemic.

19 95. Even granting that the pandemic has affected more than two Oregon
20 counties, the fact that the highest number of cases and deaths is concentrated in four
21 counties encompassing what is essentially the greater Portland metropolitan area, while
22 the number of cases and deaths across the rest of the state are significantly lower,
23 indicates that Defendant GOVERNOR’s statewide orders are overreaching in the
24 extreme, thereby violating the spirit and intent, if not the letter, of the law. *See* Ex.
25 “D.” CHURCHES and CHURCHGOERS in the County of Baker and other rural
26 counties where the threat of spreading or contracting the coronavirus is virtually

1 nonexistent, or at least extremely low, should not be held hostage by the fact that a
2 small cluster of counties is still trying to get a handle on the pandemic.

3 96. If Defendant GOVERNOR can disregard the Oregon Constitution under
4 the circumstances presented here – especially since Article X-A prescribes a procedure
5 that GOVERNOR is required to follow in circumstances like those presented here –
6 then she and future governors may, and likely will, disregard it at whim so long as they
7 claim to be doing so in the interest of preserving public health and safety.

8 97. Based on the foregoing, Plaintiffs respectfully request that the Court
9 declare as follows:

- 10 a. Pursuant to Article X-A, § 6(1) of the Oregon Constitution, the state of
11 emergency that Defendant GOVERNOR declared via Executive Order
12 20-03 on March 8, 2020, expired by operation of law on April 7, 2020,
13 30 days after GOVERNOR issued the order [*see* Ex. “G”].
- 14 b. The 60-day duration set forth in Executive Order 20-03 violates Oregon
15 constitutional and statutory law. *See* Ex. “A.” Even though the 60 days
16 will have already lapsed when the Court hears this matter, Executive
17 Order 20-03 should have terminated after 14 days pursuant to ORS
18 433.441(5). Furthermore, Article X-A, § 6(2) of the Oregon
19 Constitution effectively prohibits Defendant GOVERNOR from
20 dictating or extending by executive fiat the duration of a catastrophic
21 disaster beyond the 30 days prescribed in Article X-A, § 6(1). *See* Ex.
22 “F.” GOVERNOR failed to follow the procedures set forth in ORS
23 433.441(5) and Article X-A, § 6(2) to extend the state of emergency
24 beyond the prescribed periods set forth therein.
- 25 c. Executive Order 20-24 is likewise facially unconstitutional: Issued on
26 May 1, 2020, Executive Order 20-24 extends the unconstitutional

1 Executive Order 20-03 by an additional 60 days, to July 6, 2020, and
2 does so without the required three-fifths approval of three-fifths of each
3 house of the Legislature. Executive Order 20-24 is also
4 unconstitutional because Defendant GOVERNOR failed to get the
5 legislative approval required under Article X-A, § 6(2) within 30 days
6 of declaring the emergency, and the prescribed 30 days had already
7 lapsed by operation of law when GOVERNOR issued the order.

8 d. All executive orders that Defendant GOVERNOR issued in furtherance
9 of Executive Order 20-03, including and especially Executive Order
10 20-12, are invalid, having terminated by operation of law or by virtue
11 of being unconstitutional. These orders also include Executive Order
12 Nos. 20-05 through 20-20, 20-22, and 20-24.

13 e. Executive Order 20-12 is also unconstitutional, as it allows
14 GOVERNOR to impinge constitutionally protected rights for as long as
15 she sees fit – even after duration of the state of emergency set forth in
16 her own orders has terminated. Even if GOVERNOR may temporarily
17 infringe on constitutional rights in the face of a catastrophic disaster,
18 she is not free to infringe on them in perpetuity in the name of
19 protecting public health and safety.

20 f. Based on the foregoing, CHURCHES are free to resume holding
21 religious gatherings, and CHURCHGOERS are free to attend such
22 gatherings.

23 **REQUEST FOR INJUNCTIVE RELIEF**

24 98. Plaintiffs refer to and hereby incorporate by reference the allegations set
25 forth in Paragraphs 1 through 97 into this Paragraph as if fully set forth herein.
26

1 99. ORS 28.080 states, “Further relief based on a declaratory judgment may be
2 granted whenever necessary or proper.”

3 100. Plaintiffs have been irreparably harmed every day beyond April 7, 2020,
4 the date on which the state of emergency declared in Executive Order 20-03 ceased to
5 exist by law pursuant to Article X-A, § 1 of the Oregon Constitution. Specifically,
6 pursuant to Executive Order 20-12, Plaintiffs have been restricted in exercise of
7 religious freedoms protected under both the Oregon and federal constitutions.

8 101. Plaintiffs will continue to be irreparably harmed every day that Executive
9 Order 20-12 remains in effect.

10 102. Plaintiffs have no adequate remedy at law beyond injunctive relief
11 prohibiting Defendant GOVERNOR from enforcing Executive Order 20-12 and any
12 other executive orders that may impinge on Plaintiffs’ constitutionally protected
13 religious freedoms.

14 103. Plaintiffs can demonstrate a reasonable likelihood of success on the merits:
15 Even if Defendant GOVERNOR is free to temporarily impinge on constitutionally
16 protected freedoms for 30 days after declaring a catastrophic disaster pursuant to
17 Article X-A, § 6(1), and even beyond that if she gets the approval of three-fifths of each
18 house of the Oregon Legislature within that 30-day timeframe, Plaintiffs can show that
19 the 30-day period lapsed without GOVERNOR obtaining the required approval. Since
20 GOVERNOR declared the current catastrophic disaster on March 8, 2020, that means
21 GOVERNOR’s orders have impinged on Plaintiffs’ constitutionally protected rights
22 every day since April 7, 2020, and will continue to do so for as long as Executive 20-12
23 remains in effect.

24 104. Based on the foregoing, the Court should grant Plaintiffs injunctive relief –
25 starting with a temporary restraining order, which Plaintiffs hereby request pursuant to
26 Or. R. Civ. P. 79, prohibiting Defendant GOVERNOR from enforcing Executive

1 Orders 20-12, 20-24, and any other executive order issued subsequently to, and seeking
2 to implement, Executive Order 20-03.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiffs pray for judgment against Defendant as follows:

5 **ON ALL CAUSES OF ACTION:**

- 6 1. A judicial declaration that all of Defendant GOVERNOR's Executive
7 Orders related to the coronavirus pandemic – 20-03, 20-05 through 20-20, 20-22, and
8 20-24 – have expired by operation of law;
- 9 2. An injunction enjoining enforcement of Executive Orders 20-03, 20-05
10 through 20-20, 20-22, and 20-24 statewide, or at minimum against Plaintiffs;
- 11 3. Attorney's fees and costs associated with bringing and maintaining this
12 action in accordance with the law; and
- 13 4. For such other and further relief as the Court may deem proper.

14 Dated: May 12, 2020

PACIFIC JUSTICE INSTITUTE

15 /s/ RAY D. HACKE _____

16 Ray D. Hacke

17 Attorney for Plaintiffs

ELKHORN BAPTIST CHURCH *et al.*

18 Trial Attorney: Ray D. Hacke

19 Oregon State Bar No. 173647

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21 Salem, OR 97305

22 Phone: (503) 917-4409

23 Fax: (916) 857-6900

24 E-mail: rhacke@pji.org

VERIFICATION

1
2 Under penalty of perjury under the laws of the State of Oregon, the undersigned
3 certifies that the statements set forth in this instrument are true and correct except as to
4 matters therein stated to be on information and belief, if any, and as to those matters,
5 and as to such matters, the undersigned verily believes the same to be true.
6

7
8
9 Date: May __, 2020

10 Tim Fisher
11 Pastor
12 Elkhorn Baptist Church
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SERVICE LIST

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